



**Vince Ryan  
Harris County Attorney**

**Harris County Attorney Memorandum  
on  
Death Notices and Voter Roll Purges**

Harris County Attorney Vince Ryan has determined that the Harris County Tax Assessor-Collector Don Sumner's refusal to remove any voter from the voter rolls of Harris County based on the Texas Secretary of State's office transmission of a list of voters suspected of being deceased is well founded and supported by the law.

A newly adopted provision of the Texas Election Code requires the Texas Secretary of State each quarter to obtain from the United States Social Security Administration information relating to deceased residents of the state and compare the information received with the statewide computerized voter registration list. The statute provides that "If the secretary determines that a voter on the registration list *is deceased*, the secretary shall send notice of the determination to the voter registrar of the counties considered appropriate by the secretary." Tex. Elec. Code §16.001(d) (emphasis added). Once such a determination is received by the voter registrar, the registrar is required by statute to remove the voter from the voter registration list. Tex. Elec. Code §16.031(b)(4).

Claims that the legislature passed two versions of §16.001(d) and that the Secretary of State is not required to follow the version quoted above are not well founded.

Senate Bill 1046 passed by the 82<sup>nd</sup> legislature, and signed into law, added Section 16.001(d) to the Election Code to read as follows:

The secretary of state shall quarterly obtain from the United States Social Security Administration available information specified by the secretary relating to deceased residents of the state and compare the information received to the statewide computerized voter registration list. If the secretary determines that a voter on the registration list is deceased, the secretary shall send notice of the determination to the voter registrar of the counties considered appropriate by the secretary.

House Bill 174, also passed by the 82nd legislature, and signed into law, added Section 16.001(d) to the Election Code to read as follows:

(d) The secretary of state shall quarterly obtain from the United States Social Security Administration available information specified by the secretary relating to deceased residents of the state.

Basic rules of statutory construction require that both laws be read together and effect be given to both. Tex. Gov. Code Chapter 311. SB 1046 does not contradict HB 174. Both laws require the Secretary of State to collect information from the United States Social Security Administration.

HB 174 actually does not repeal the burden found in SB 1046 but shifts the same statutory language contained in the SB 1046 version of section 16.001(d) to Tex. Elec. Code §18.068, which reads as follows:

The secretary of state shall quarterly compare the information received under section 16.001 of this code. . . to the statewide computerized voter registration list. If the secretary determines that a voter on the registration list is deceased. . . , the secretary shall send notice of the determination to the voter registrar of the counties considered appropriate by the secretary.

The language of Section 18.068 contained in HB 174 is exactly the same, in relevant part, as the language contained in SB 1046. Therefore, the argument that HB 174 superseded the original version of section 16.001(d) is misleading and beside the point. Nothing in either SB 1046 or HB 174 grants the Secretary of State the power to impose the burden of initiating investigations to remove people from the voter registration list on local registrars.

In other words, neither Section 16.001(d) nor Section 18.068 of the Election Code grants the Secretary of State the authority to direct local voter registrars to send letters to persons based on raw lists obtained by the Secretary of State from the Social Security Administration.

Any assumption of such authority or other related change in procedure would have to undergo the preclearance requirements of Section 5 of the Voting Rights Act before any voter could be removed from the registration list pursuant to the new authority or procedure. See, e.g., *State of Texas v. United States* (D.D.C. August 28, 2012 ) and *State of Texas v. Holder*. (D.D.C. August 30, 2012)

The recently received notice did not make the determination required by either SB 1046 (section 16.001(d)) or HB 174 (section 18.068) that the voters on the list were deceased. Many people have come forward to insist that they were identified incorrectly, including two Assistant Harris County Attorneys. In fact, the Secretary of State's office

did not require removal from the voter registration list as required by Tex. Elec. Code §16.031(b)(4), but required county voter registrars to send a notice of inquiry instead.

The Harris County Attorney's Office is of the opinion that the Texas Secretary of State does not have the power under the statute to require voter registrars to take this action. Instead, the *local voter registrar* is given the power under the law to use any lawful means to investigate whether a person is still eligible for registration. If the *registrar* determines after the investigation of available information that there is reason to believe that the person may no longer be eligible for registration, then the *registrar* must send a notice requesting any information relevant to determining the voter's eligibility for registration. The notice must include a warning that the voter's registration may be cancelled upon the failure to give an appropriate reply within 30 days. The registrar then makes the decision whether to cancel the registration based on the voter's reply and all other information available. Tex. Elec. Code §16.033. (emphasis added).

There is no provision that the Secretary of State may force the local voter registrars to conduct such an investigation or send such a notice letter. Clearly, the discretion to conduct an investigation and make the determination of eligibility after notice lies only with the local registrar.

The right to vote cannot be summarily taken away without due process. The procedure initiated by the Texas Secretary of State's office would discourage many people to vote in the upcoming election and is not authorized by statute. For Harris County to follow these instructions without question would violate the rights of its citizens. Harris County's refusal to do so is well supported by the law and the Constitution.